IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 30420 of 2007(U)

OS.482/2000 of PRL.MUNSIFF COURT, CHERTHALA

.....

PETITIONER:

P.K.MOHNDAS, PAYIKKATTU VELIYIL,
KODAMTHURUTH MURI, CHERTHALA.

BY ADV. SMT.C.G.BINDU
SMT.C.G.AJITHA

RESPONDENT:

CHITRALAYA FINANCE & CHITS,
REP. BY ITS MANAGING PARTNER,
M.G.BHASURANGAN, CHITRALAYAM,
KODAMTHURUTH VILLAGE,
CHERTHALA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

==========

W.P(C).No.30420 of 2007

==========

Dated this the 15th day of October, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside Ext.P4 order whereby the court ordered delivery of the property to be effected on 30.7.2007 and for report on 31.7.2007. Learned counsel for the writ petitioner submits that so far delivery has not taken effected and it is posted for delivery in the next week of October. Learned counsel for the writ petitioner submits before me that even by going through the petition, it is clear that the sale certificate has not been produced along with the petition for delivery of the property and until and unless the sale certificate is produced, the court cannot order delivery.

2. It is a fairly settled position of law that one can file an application for delivery of the property without a sale certificate, but the court can order delivery of the property only on the production of sale certificate. The reason for the same is that under Article 134 of the Limitation Act, the period fixed for

delivery of the property is one year from the date of confirmation of the sale. There may be instances where the court is not in a position to issue sale certificate within time. Under such circumstances, in order to get away from the plea of limitation, an application can be filed in advance and sale certificate can be produced later; so that right of the purchaser is not affected. Therefore, filing of an application without a sale certificate cannot be found fault with. But if delivery is ordered without the sale certificate, it cannot be entertained.

3. Therefore, this Writ Petition is disposed of as follows:

(i) If the sale certificate had already been produced, then the order of delivery can be proceeded with.

(ii) If the sale certificate is not produced, then the court cannot direct delivery of the property and the court has only to defer the matter till the sale certificate is issued and produced. In such contingency, the court is directed to recall the warrant of delivery and post it to a convenient day for the parties to submit.

M.N.Krishnan,
Judge.

ess 15/10